

FILED

OCT 01 2018

Clerk, U.S. Courts
District Of Montana
Missoula Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

DAVID P. KING, JR.,

Plaintiff,

vs.

**LSF9 MASTER PARTICIPATION
TRUST,**

Defendant.

CV 17-172-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Order and Findings and Recommendation on June 20, 2018, recommending that the Court deny the motion for judgment on the pleadings filed by Defendant U.S. Bank, N.A., as Trustee for LSF9 Master Participation Trust (“U.S. Bank”). (Doc. 38.) U.S. Bank did not timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017)

(citation omitted).

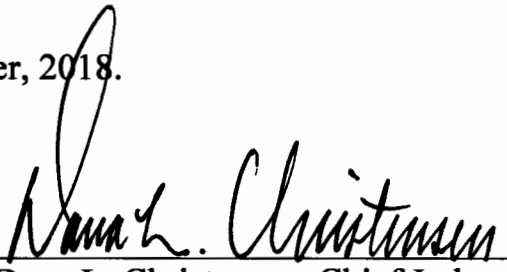
Having reviewed the Findings and Recommendation (Doc. 38), the Court finds no clear error in Judge Lynch's Findings and Recommendation. Judge Lynch did not clearly err in determining that King's proposed amended complaint would not be futile because the proposed amended complaint sets forth a potentially viable basis for relief. (Doc. 38 at 4-9.) Nor is there clear error in the determination that the filing of King's amended complaint renders U.S. Bank's motion for judgment on the pleadings moot.

Accordingly, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendation (Doc. 38) is ADOPTED IN FULL.

(2) U.S. Bank's motion for judgment on the pleadings is DENIED as moot but remains subject to renewal.

DATED this 1st day of October, 2018.



Dana L. Christensen, Chief Judge
United States District Court